MICHIGAN LAW REVIEW

PUBLISHED MONTHLY DURING THE ACADEMIC YEAR, EXCLUSIVE OF OCTOBER, BY THE
LAW FACULTY OF THE UNIVERSITY OF MICHIGAN

SUBSCRIPTION PRICE $2.50 PER YEAR. 35 CENTS PER NUMBER

NOTE AND COMMENT.

TEN-HOUR LABOR LAWS.—The United States Supreme Court will soon have another opportunity to pass on the questions involved in that thorn in the flesh of social reformers—the Bakeshop Case—if, as is probable, a case recently decided by the Mississippi Supreme Court is carried higher. Last year Mississippi enacted a sweeping ten-hour law making it unlawful for persons, firms or corporations engaged in manufacturing or repairing "to work their employees more than ten hours per day except in cases of emergency or where public necessity requires." Defendant, engaged in the manufacture of lumber and in the repair of its machinery used in and about its plant and railroad, was indicted for working the men in its employ more than ten hours a day. The law was sustained on demurrer as constitutional. *State* v. *J. J. Newman Lumber Co.* (Miss. 1912) 59 South. 923.

After more or less hesitation it is now clearly established that legislation limiting the hours of labor of women is valid. *State* v. *Muller,* 48 Ore. 252, 85 Pac. 855; *Muller* v. *Oregon,* 208 U. S. 412, 28 Sup. Ct. 324; *Ex parte Miller,* 162 Calif. 687, 124 Pac. 427; *Ritchie* v. *People,* 155 Ill. 98, 40 N. E. 454; *Ritchie* v. *Wayman,* 244 Ill. 509, 91 N. E. 695; *People* v. *Elerding,* 254 Ill. 509, 81 N. E. 695; *People* v. *Elerding,* 254 Ill. 579, 98 N. E. 982; *Com.*

v. *Riley,* 210 Mass. 387, 97 N. E. 367; *State* v. *Somerville,* 67 Wash. 638, 122 Pac. 324. But see *Burcher* v. *People,* 41 Colo. 495, 93 Pac. 14; *People* v. *Williams,* 189 N. Y. 131, 81 N. E. 778 and 5 MICH. L. REV. 579, 10 MICH. L. REV. 492, 574, 642.

But when it comes to regulating the hours of labor in private employment of men, or of men and women both, there is still considerable doubt. Perhaps the earliest attempts to regulate or limit the time of work of laborers generally were the Sunday labor laws. This is interesting as the principal case quotes the Sabbatical laws of Israel as ancient authority for limiting the time for work. There was a slight tendency at one time for the courts to hold unconstitutional as violating religious freedom laws prohibiting Sunday labor. *Ex parte Newman,* 9 Cal. 502. But the common view of the later decisions is that such laws are social and economic in their effect and are valid. *Ex parte Andrews,* 18 Calif. 679; *People* v. *Havnor,* 149 N. Y. 195, 43 N. E. 541; *State* v. *Petit,* 74 Minn. 376, 77 N. W. 225; 177 U. S. 164, 20 Sup. Ct. 666; *Ex parte Northrup,* 41 Ore. 489, 69 Pac. 445, 2 MICH. L. REV. 633.

The great class of cases, however, in which hours of labor legislation has been most discussed in recent years is that where the law in question has been based upon the strain or danger of the particular employment in which the laborer is engaged. The leading case is *Holden* v. *Hardy,* 14 Utah 71 46 Pac. 756; affirmed 169 U. S. 366, 18 Sup. Ct. 383, in which a Utah statute imposing an eight hour day for persons employed in mines and smelters was held to be constitutional. The Colorado court refused to follow this decision in the case of an identical law. *In re Morgan,* 26 Col. 415, 58 Pac. 1071. But a constitutional amendment was soon adopted restricting to eight the hours of labor in these employments. *Holden* v. *Hardy, supra,* has been followed as to mines and smelters: *In re Boyce,* 27 Nev. 299, 75 Pac. 1; *Ex parte Kair,* 28 Nev. 425, 80 Pac. 463; as to underground mines, *State* v. *Cantwell,* 179 Mo. 245, 78 S. W. 569; *Cantwell* v. *Missouri,* 199 U. S. 602, 3 MICH. L. REV. 663; as to street railways, *In re Ten-Hour Law,* 24 R. I. 603, 54 Atl. 602; as to railroad employees engaged in interstate commerce, *B. & O. R. R.* v. *Interstate Commerce Commission,* 221 U. S. 612, 31 Sup. Ct. 621; as to bakeshops, *People* v *Lochner,* 177 N. Y. 145. This last case was appealed to the Supreme Court of the United States, which held, five judges to four, that the bakeshop law attempted an arbitrary interference with the freedom of contract, and could not be sustained as an exercise of the police power to protect the public health, safety and morals or general welfare. *Lochner* v. *New York,* 198 U. S. 45, 25 Sup. Ct. 539. This decision of the Supreme Court was followed in another bakshop case, *State* v. *Miksicek,* 225 Mo. 561, 125 S. W. 507, 8 MICH. L. REV. 586.

The classification in the principal case is sustained on the ground that the legislature had in view the rapid change from an agricultural to a manufacturing community and decided that such a regulation was for the best interests of the community. The Mississippi court quotes extensively from the dissenting opinions in *Lochner* v. *New York, supra,* to the effect that whether or not this is wise legislation is a question for the legislature, not for the

court. An attempt is also made to distinguish the principal case from the Lochner case on the ground that the emergency exception takes it out of the class in which that case is found and puts it in the class of *Holden* v. *Hardy,* supra, since the Utah statute there construed contained this exception. But doubt is thrown upon this view by the fact that Mr. Justice PECKHAM whose statement about the emergency exception in the Lochner decision is relied on in the principal case, himself dissented from the decision in *Holden* v. *Hardy.* One who reads the series of decisions wherein the question of hours of labor has been involved is inclined to agree with the dissent of Mr. Justice HOLMES in *Lochner* v. *New York, supra,* where he says: "This case is decided upon an economic theory which a large part of the country does not entertain. If it were a question whether I agreed with that theory, I should desire to study it further and long before making up my mind. But I do not conceive that to be my duty, because I strongly believe that my agreement or disagreement has nothing to do with the right of a majority to embody their opinions in law." Professor Henry R. SEAGER writes in 19 POL. SCI. QUAR. 589, "the question of the constitutionality of a restrictive labor law is inseperably connected with the question of the wisdom of such a law." And another who has made a careful study of these decisions says: "What the courts actually do in cases in which they declare a law of this sort unconstitutional, is to substitute their ideas of wisdom for those of the legislature, although they continually say that this is not the case." GOODNOW, SOCIAL REFORM AND THE CONSTITUTION, p. 247. It is now submitted that the economic theory referred to by Mr. Justice HOLMES is no longer controlling in the Supreme Court and that the principal case will be frankly affirmed on appeal. This will help to restore that court to its former position as the most progressive court in the country.

G. S. B.

THE CONSTITUTIONALITY OF THE NON-PARTISAN BALLOT.—A case of no little interest and one of considerable political significance, involving the constitutionality of the non-partisan ballot, recently came before the Supreme Court of Ohio for consideration. In *State ex rel. Weinberger* v. *Miller, et al,* (Ohio 1912), 99 N. E. 1078, proceedings were instituted to have declared as unconstitutional a law which provided for the election of judicial officers upon a non-partisan ballot, free from all distincive party marks or emblems, and which further provided that the names of the candidates should rotate in the order in which they were placed upon the ballots. The constitutionality of the law was attacked upon the ground that it added another provision to the qualification of an elector which was not prescribed by the constitution, in that it required a voter to be able to read in order to select the candidates for whom he wished to vote, thus adding an educational qualification. The Ohio constitution provides in § 1, article 5, that, "every male citizen of the United States of the age of 21 who shall have been a resident" (for a stated period) "shall have the qualification of an elector and be entitled to vote at all elections." A divided court, the judges standing three to two, upheld the validity of the law. The majority opinion was based upon the